

**BEFORE THE WATER RESOURCES DEPARTMENT  
OF  
STATE OF OREGON**

**COUNTY OF UMATILLA**

In the Matter of a Proposed Change	)	ORDER APPROVING A PERMANENT
In Place of Use of Water Within an	)	DISTRICT TRANSFER AND PARTIAL
Irrigation District — TRANSFER 9598	)	DIMINISHMENT OF A WATER RIGHT

**FINDINGS OF FACT**

1. Pursuant to ORS 540.580, HERMISTON IRRIGATION DISTRICT, 366 E. Hurlburt Ave., Hermiston, OR, 97838, petitioned the Oregon Water Resources Department to permanently change the place of use of water within the boundaries of the irrigation district. The petition was received on November 12, 2003, and included the required fees.
2. The Department assigned the petition transfer application number T-9598.
3. The Department published notice of receipt of the petition in the Department's Weekly Notice dated November 25, 2003. The petition was noticed as a transfer within irrigation district boundaries.
4. No comments or timely protests were received in response to the published notice.
5. The right proposed to be modified was confirmed by decree of the Circuit Court of the State of Oregon for Umatilla County. The decree is of record at Salem, in the Order Record of the Water Resources Director, in Volume 3, at Page 242, as modified by orders of the Water Resources Director approving the transfer of water rights.

The date of priority is February 25, 1904 , for primary irrigation from the Umatilla River (Maxwell Canal) and September 6, 1905 for supplemental irrigation from water stored in Cold Springs Reservoir. The waters may be used jointly and interchangeably upon the lands described by the decree.

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must filed within the 60 day time period specified by ORS 183.484(2).

Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

For those lands comprised of loam or fine sand or fine textured soil the amount of water diverted for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3.0 ACRE-FEET for each acre irrigated each year. For those lands comprised of coarse sand or loose gravel subsoil or loose coarse texture soil the amount of water diverted for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second (or its equivalent) and 6.0 ACRE-FEET for each acre irrigated each year.

- Hermiston Irrigation District petitioned to permanently change the place of use of primary and supplemental irrigation, diverted through the Maxwell Canal, appurtenant to 49.5 acres under the Umatilla River Decree. The petition proposed to change the place of use from the locations identified in Table 1 to the locations listed in Table 2.

TABLE 1. AUTHORIZED PLACE OF USE UNDER THE UMATILLA RIVER DECREE - VOL. 3, PAGE 242											
TWP	RNG	SEC	QTR	QTR	TAX LOT	USE	AC	PRIORITY DATE	DUTY (AF)	NOTICE # (Mark's #)	APPLICANT
4N	28E	12	NE¼	SW¼	100	IR(P) IR(S)	8.90	2-25-1904 9-06-1905	3.0	4 (01)	PACIFIC WESTERN HOMES
4N	28E	12	NW¼	SW¼	100	IR(P) IR(S)	5.10	2-25-1904 9-06-1905	3.0	4 (01)	PACIFIC WESTERN HOMES
4N	28E	15	SW¼	NE¼	4504	IR(P) IR(S)	16.60	2-25-1904 9-06-1905	3.0	5 (02)	PRANCING HORSE
4N	28E	15	SW¼	NE¼	4504	IR(P) IR(S)	5.10	2-25-1904 9-06-1905	6.0	5 (02)	PRANCING HORSE
4N	28E	15	SE¼	NW¼	4504	IR(P) IR(S)	13.60	2-25-1904 9-06-1905	3.0	5 (02)	PRANCING HORSE
4N	28E	15	SE¼	NW¼	4504	IR(P) IR(S)	0.20	2-25-1904 9-06-1905	6.0	5 (02)	PRANCING HORSE
<b>TOTAL:</b>							<b>49.50</b>				

The right to use water for the above purposes is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations contained in the decree. The use also shall conform to any reasonable rotation system ordered by the proper state officer.

TABLE 2.  
PROPOSED CHANGE IN PLACE OF USE

TWP	RNG	SEC	QTR	QTR	TAX LOT	USE	AC	PRIORITY DATE	DUTY (AF)	NOTICE # (Mark's #)	RECIPIENT	
5N	29E	26	NE¼	NW¼	2700	IR(P) IR(S)	12.10	2-25-1904 9-06-1905	3.0	4(01)	LES MARKS	
5N	29E	26	NW¼	NW¼	2700	IR(P) IR(S)	1.90	2-25-1904 9-06-1905	3.0	4(01)	LES MARKS	
5N	29E	26	NE¼	NW¼	2700	IR(P) IR(S)	4.80	2-25-1904 9-06-1905	3.0	5(02)	LES MARKS	
5N	29E	26	NE¼	NW¼	2700	IR(P) IR(S)	5.30	2-25-1904 9-06-1905	6.0	5(02)	LES MARKS	
5N	29E	26	NW¼	NW¼	2700	IR(P) IR(S)	8.50	2-25-1904 9-06-1905	3.0	5(02)	LES MARKS	
5N	29E	26	SW¼	NW¼	2700	IR(P) IR(S)	9.40	2-25-1904 9-06-1905	3.0	5(02)	LES MARKS	
5N	29E	26	SE¼	NW¼	2700	IR(P) IR(S)	7.50	2-25-1904 9-06-1905	3.0	5(02)	LES MARKS	
<b>TOTAL:</b>							<b>49.50</b>					

PARTIAL DIMINISHMENT OF A WATER RIGHT

Department review of the proposed place of use revealed 49.5 acres in section 26 of Township 5 North, Range 29 East, W.M., have an existing primary water right evidenced by Certificate 52828 issued in the name of L.J. and Alice Marks.

On January 6, 2004, the Department received an affidavit from landowners Leslie J. Marks and Alice B. Marks requesting the Department diminish from primary irrigation to supplemental irrigation a portion of the right described by Certificate 52828, State Record of Water Right Certificates.

The portion of Water Right Certificate 52828 requested to be diminished is:

The portion of the right for the irrigation of 49.5 acres, perfected under Permit 45108, for the use of 1.21 cubic feet per second from the Columbia River, a tributary to the Pacific Ocean. The date of priority is May 23, 1980.

A description of the place of use of the portion to be diminished to supplemental irrigation is as follows:

CERTIFICATE 52828

NE¼ NW¼ 22.2 ACRES

NW¼ NW¼ 10.4 ACRES

SW¼ NW¼ 9.4 ACRES

SE¼ NW¼ 7.5 ACRES

SECTION 26

TOWNSHIP 5 NORTH, RANGE 29 EAST, W.M.

7. Pursuant to ORS 540.574 and ORS 540.580, in reviewing the petition submitted by Hermiston Irrigation District, the Department has determined the following:
  - a) The petition contains the information required under ORS 540.574(3).
  - b) The petition meets the requirements of ORS 540.580.
  - c) The petition contains maps which are satisfactory to the Department and which the District certified as being accurate.
  - d) The petition includes the required statement from the District that it has on file, and available for review, written authorization from each landowner affected by the transfer.
  - e) The rate, duty, and total number of acres proposed for transfer do not exceed that of the water right subject to transfer.
  - f) The lands from which the water right would be moved by the proposed transfer will not continue to receive water under the water right.
  - g) The use authorized by the water right subject to transfer will not change; and
  - h) The proposed change in place of use will not result in injury to other water rights.
8. The petition was filed prior to the end of the calendar year or prior to any delivery of water as required under ORS 540.580(2).

**CONCLUSIONS OF LAW**

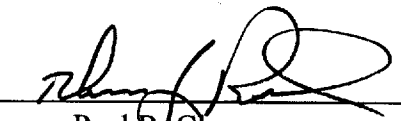
1. The petition submitted by Hermiston Irrigation District proposing permanent changes in place of use within district boundaries included the information, and satisfied the criteria, required by ORS 540.574(3).
2. The proposed transfer complies with the requirements of ORS 540.580.
3. The Director should approve the transfer because the petition satisfies the criteria and requirements of ORS 540.574(3) and ORS 540.580 resulting in no injury to other water rights.

## ORDER

It is hereby ORDERED :

1. The proposed changes to the water right evidenced by the Umatilla River Decree (Volume 3, Page 242 and as modified) may be made provided the following conditions are met by the water user:
  - a. The proposed changes shall be completed on or before October 1, 2005.
  - b. The former places of use shall no longer be irrigated as a part of this water right.
  - c. Proof, to the satisfaction of the Director, that the changes approved by this order have been completed must be submitted by HERMISTON IRRIGATION DISTRICT, on or before October 1, 2006.
2. Except as modified herein, all other conditions and limitations of the Umatilla River Decree remain in effect.
3. When the Director determines that it is necessary, or to facilitate records keeping, new certificates will be issued to confirm all completed changes for which satisfactory proof has been made and to confirm that portion of the right not modified by this or any other order.
4. In addition, it is HEREBY ORDERED, that the above described 49.5 acres for primary irrigation be diminished to supplemental irrigation to allow for the change in place of use of the Hermiston Irrigation District rights authorized under the Umatilla River Decree, Volume 3, at Page 242, Umatilla County.

WITNESS the signature of the Water Resources Director affixed JAN 21 2004

  
For Paul R. Cleary